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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

LURATECH, INC., Plaintiff and Appellant, v. DOC SOLUTIONS DE MEXICO S.A. DE C.V., Defendant and Respondent.	A144191 (San Mateo County Super. Ct. No. CIV528515)

Plaintiff LuraTech, Inc. appeals after the trial court granted the motion of defendant Doc Solutions de Mexico S.A. de C.V. to quash service of summons. We shall affirm the order.

I. BACKGROUND

In its complaint, plaintiff alleged as follows: Plaintiff is a California corporation with its principal place of business in Redwood City, California, and defendant is a Mexican company. In 2010, the parties entered into a written agreement pursuant to which (1) defendant agreed to pay plaintiff annual fees to license the use of plaintiff's software, and (2) the parties agreed to jurisdiction in San Mateo County. In 2013, defendant breached the agreement by refusing to pay $32,504.93.

Defendant moved to quash service of summons on the ground that it was not subject to the jurisdiction of the California courts. In support of its motion, it provided the declaration of its Director General averring that it does not have an agent for service of process in California, that it does not maintain bank accounts, own assets, or have

telephone listings or offices in California, and that it does not otherwise transact business in California. According to the declaration, in December 2010, defendant issued a request for proposal for computer services related to business operations.[1] Plaintiff contacted defendant and discussions took place by telephone and email. Plaintiff sent a representative to Mexico to meet with defendant's employees. None of defendant's employees traveled to plaintiff's California offices. Plaintiff submitted an unsigned "Proposal and Initial Statement of Work," but the parties did not enter into a written agreement.

In opposition to the motion to quash, plaintiff submitted evidence of its business dealings with defendant. This included the "Proposal and Initial Statement of Work" dated February 3, 2010 (the Proposal), which stated it was made in response to defendant's request for proposal for "an automated document workflow, classification and data extraction software solution." The Proposal contemplated the use of a "document conversion platform, DocYard," and provided for four payments, to be due February through July 2010, totaling $225,855. It also contemplated that the license to use the software would be renewed automatically "as long as the yearly maintenance and support agreement is in place." It provided that the Proposal "is also the basis of our agreement to work together and will be confirmed with the receipt of the Purchase Order from DOCSOLUTIONS." The "Terms of the Proposal" found in the "Appendixes" stated that after written acceptance of the proposal, payment could be made to plaintiff's account at the Bank of America; and that the proposal was valid until February 4, 2010. The "Appendixes" terms also included this provision: "Place of Jurisdiction [¶] San Mateo County, CA." Fredrik Nilsson, who at the time was defendant's "Director de Operaciones," or Operations Manager, initialed each page of the Proposal. The Proposal did not contain any signature blocks for the parties to sign or date.

[1] The request for proposal is not in the record, so there is no evidence as to whether the request for proposal was directed to Luratech specifically, sent to multiple recipients in multiple states, or simply posted to the internet.

Plaintiff submitted evidence that defendant made 24 payments between February 12, 2010 and March 8, 2013, for a total of $402.603.61. One of those payments, in 2012, was made pursuant to a purchase order prepared by defendant, bearing Nilsson's printed name and initials that appear to be the same as those on the Proposal. Plaintiff's corresponding invoice indicates the order was for DocYard support and maintenance. The "wire transfer advice" indicated that the originating bank for the payment was the Banco Nacional de Mexico S.A. and the receiving bank was the Bank of America.

In response to the opposition, defendant submitted a declaration by Nilsson stating that while he was Director de Operaciones, he did not have authority to bind defendant to any contract. After he received the Proposal, he initialed each page in accordance with customary business practices in Mexico "to provide evidence that [he] received the proposal, and so that no changes could subsequently be made to the text of the proposal." The declaration of a Mexican attorney stated that "[p]ursuant to the applicable Mexican commercial corporate law, only a person having the actual authority granted to him by a Mexican Corporation through a power of attorney, specifically granted in by [*sic*] the provisions contained in the corporation's charter of incorporation; or a specific resolution authorizing the granting of a power of attorney to the individual . . . has the authority to act as legal representative of the corporation with the power to legally bind the corporation to any obligation." (Emphasis omitted.) The attorney also averred that it was standard practice in Mexico, when entering into transactions with a company, to require a copy of the document showing the representative had the power to bind the company and to include in the contract a description of the documents establishing that authority.

The trial court granted the motion to quash service of summons. It found defendant had made a prima facie case it had no presence or activity in California and plaintiff had not submitted evidence of minimum contacts for general jurisdiction purposes; that the payments defendant made were insufficient to demonstrate defendant purposefully availed itself of the protections of the state for purposes of specific jurisdiction; and that the "Place of Jurisdiction" clause in the Proposal described only

venue and was insufficient to submit defendant to the personal jurisdiction of the California courts.

II. DISCUSSION

" 'When a defendant moves to quash service of process on jurisdictional grounds, the plaintiff has the initial burden of demonstrating facts justifying the exercise of jurisdiction. [Citation.] Once facts showing minimum contacts with the forum state are established, however, it becomes the defendant's burden to demonstrate that the exercise of jurisdiction would be unreasonable. [Citation.] When there is conflicting evidence, the trial court's factual determinations are not disturbed on appeal if supported by substantial evidence. [Citation.] When no conflict in the evidence exists, however, the question of jurisdiction is purely one of law and the reviewing court engages in an independent review of the record. [Citation.]' " (*Serafini v. Superior Court* (1998) 68 Cal.App.4th 70, 77–78.)

Plaintiff contends that pursuant to the Proposal's "Place of Jurisdiction" clause, defendant agreed to jurisdiction in California, and argues that, in any case, defendant had sufficient contacts with the state to justify specific jurisdiction in this case.

We conclude that plaintiff did not meet its burden to show by a preponderance of the evidence that defendant agreed to jurisdiction in this state. (See *Futuresat Industries, Inc. v. Superior Court* (1992) 3 Cal.App.4th 155, 159 (*Futuresat*).) While it is true that " 'parties to a contract may agree in advance to submit to the jurisdiction of a given court.' " (*Berard Construction Co. v. Municipal Court* (1975) 49 Cal.App.3d 710, 721 (*Berard*)), it is not sufficiently clear that such an agreement was made here.

Defendant has argued that there was never an enforceable contract because Nilsson was not authorized to bind defendant to any contractual obligations and the agreement was never signed by either party. In support, defendant submitted evidence that only individuals appointed by the corporation's charter or by resolution can bind a corporation to legal obligations. Nilsson averred he did not have such authority and that, according to Mexican custom, he initialed the pages only to show he had received the document and to prevent changes from being made. Plaintiff replies that there is no

dispute there was a written agreement, because the agreement was "executed by Mr. Nilsson" and "delivered" to plaintiff, which delivery made it effective; further it had been "fully performed pursuant to its terms for at least well over two years." We need not decide this question because we conclude the term in the contract was not sufficiently clear to demonstrate consent to personal jurisdiction in California.

Plaintiff relies primarily on *Berard, supra*, 49 Cal.App.3d 710. There, the contract provided as follows: "This lease is executed in Los Angeles, California, and shall be construed under the laws of the State of California, *and the parties hereto agree that any action relating to this lease shall be instituted and prosecuted in the courts in Los Angeles County* and each party waives the right to change of venue." (*Id.* at pp. 720–721.) The lower court deemed this to be only a venue provision, but the appellate court concluded that it was an " 'unequivocal consent to the jurisdiction of the California courts. The waiver of the "right to change of venue" does not detract from the effect of this consent; it merely precludes either party from seeking to change the place of trial to another court.' " (*Id*. at p. 721.) Indeed, the respondent in that case did not dispute that the contract conferred jurisdiction but argued only that the clause had not been drawn to the attention of the officer signing the contract on the defendant's behalf. (*Id.* at p. 722.) Other cases relied upon by plaintiff pertain to the enforcement of equally clear and unequivocal contract provisions consenting to jurisdiction. (See *Smith, Valentino & Smith, Inc. v. Superior Court* (1976) 17 Cal.3d 491, 494 ["The contract included a reciprocal forum selection clause whereunder Smith agreed to bring all actions arising out of the agency agreement only in Philadelphia, and Assurance in turn agreed to bring all such actions only in Los Angeles"]; *CQL Original Products, Inc. v. National Hockey League Players' Assn.* (1995) 39 Cal.App.4th 1347, 1352 [" 'This Agreement shall be governed by the law of Ontario, Canada and any claims arising hereunder shall, at the Licensor's election, be prosecuted in the appropriate court of Ontario. The Licensee hereby attorns to the jurisdiction and judgment of the courts of the Province of Ontario, Canada, and agrees that a judgment of an Ontario court shall be enforceable in the jurisdiction in which the Licensee is located' "].)

While the question is a close one, we conclude the mere statement, "Place of Jurisdiction [¶] San Mateo County, CA." is not an "unequivocal consent to the jurisdiction of the California courts." (*Berard, supra,* 49 Cal.App.3d at p. 721.) That clause, standing alone, does not convey unambiguously to the foreign party that it is consenting to be sued in the California courts. Even the trial court understood it to be only a choice of venue. We agree it can rationally be read to mean that *if* suit is brought in California, it will be filed in San Mateo County. This interpretation is reinforced by the fact that the proposal contained no choice-of-law provision.

The provision's placement in the proposal also creates uncertainty. It is found in the "Appendixes" under the heading "Terms of the Proposal" which itself states, under subheading "Additional Terms," that if defendant selects plaintiff as the "solution provider," then "[o]ther terms and conditions will be included." The next line states, "Place of Jurisdiction [¶] San Mateo County, CA" and the final line states, "This proposal is valid until February 4, 2010." Based on the placement of this language, the provision could be read to relate only to the proposal and not to the contract contemplated to be entered upon. Additionally, the provision is not contextually related to any terms pertaining to how disputes between the parties will be resolved; indeed, nothing in the proposal addresses that issue. We cannot construe such a truncated and isolated provision as a clear agreement by a foreign company to be sued in California.

We also agree with the trial court that plaintiff has not shown defendant's activities justify the assertion of specific jurisdiction in this matter in the absence of an agreement. "Personal jurisdiction may be either general or specific. A nonresident defendant may be subject to the *general* jurisdiction of the forum if his or her contacts in the forum state are 'substantial . . . continuous and systematic.' [Citations.] In such a case, 'it is not necessary that the specific cause of action alleged be connected with the defendant's business relationship to the forum.' [Citations.]" (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 445–446 (*Vons*).) There is no question of general jurisdiction here.

"If the nonresident defendant does not have substantial and systematic contacts in the forum sufficient to establish general jurisdiction, he or she still may be subject to the *specific* jurisdiction of the forum, if the defendant has purposefully availed himself or herself of forum benefits [citation], and the 'controversy is related to or "arises out of" a defendant's contacts with the forum.' [Citations.]" (*Vons, supra,* 14 Cal.4th at p. 446.) "The United States Supreme Court has described the forum contacts necessary to establish specific jurisdiction as involving variously a nonresident who has 'purposefully directed' his or her activities at forum residents [citation], or who has 'purposefully derived benefit' from forum activities [citation], or ' "purposefully avail[ed himself or herself] of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws." ' [Citation.] The court also has referred to the requisite forum contact as involving a nonresident defendant who ' "deliberately" has engaged in significant activities with a State [citation] or has created "continuing obligations" between himself and residents of the forum [citation]' [citation], concluding that in such cases the defendant 'manifestly has availed himself of the privilege of conducting business [in the forum], and because his activities are shielded by "the benefits and protections" of the forum's laws it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well.' [Citation.]" (*Ibid.*) Once it has been determined that a defendant purposefully established minimum contacts, " 'these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with "fair play and substantial justice." ' [Citations.] Courts may evaluate the burden on the defendant of appearing in the forum, the forum state's interest in adjudicating the claim, the plaintiff's interest in convenient and effective relief within the forum, judicial economy, and 'the "shared interest of the several states in furthering fundamental substantive social policies." ' [Citation.]" (*Id.* at pp. 447–448; and see *Cornelison v. Chaney* (1976) 16 Cal.3d 143, 147–148; Code Civ. Proc., § 410.10.)

It appears from the record that the only activity defendant engaged in directed toward California was placing purchase orders and transferring money from its Mexican

bank account to plaintiff's Bank of America account. The court in *Belmont Industries, Inc. v. Superior Court* (1973) 31 Cal.App.3d 281, 285 (*Belmont Industries*) held that "an out-of-state purchaser of services from a California resident by way of a contract negotiated through interstate communications, consummated outside of California, is [not] subject to the judicial jurisdiction of California in a suit to enforce payment for those services." A number of other California cases have likewise found no jurisdiction over out-of-state customers of California businesses who were not present in the state for purposes of general jurisdiction. (See, e.g. *Futuresat, supra,* 3 Cal.App.4th at pp. 160–161; *Hunt v. Superior Court* (2000) 81 Cal.App.4th 901, 906–907; *Interdyne Co. v. SYS Computer Corp.* (1973) 31 Cal.App.3d 508, 511–512; *Cornell University Medical College v. Superior Court* (1974) 38 Cal.App.3d 311, 317–318; *Tiffany Records, Inc. v. M.B. Krupp Distributors, Inc.* (1969) 276 Cal.App.2d 610, 615–619 (*Tiffany Records*).)

Futuresat is instructive as to the limits of this rule. The court there concluded California did not have jurisdiction over an out-of-state buyer of motion picture videotapes. (*Futuresat, supra,* 3 Cal.App.4th at p. 157.) In doing so, the court noted that California decisions had "declined to find jurisdiction against out-of-state buyers except in rare instances where extensive business was done here. [Citations.] Jurisdiction over an out-of-state buyer must be premised on a substantial basis such as an ongoing relationship or course of dealings with the plaintiff. The test is not physical presence, which is not essential, but rather the totality of the jurisdictional contacts as relevant to whether the assumption of jurisdiction is fair. Continuous and substantial buying activity within the state can constitute sufficient contacts to warrant the exercise of jurisdiction. [Citations.]" (*Id.* at pp. 159–160.)

In the cases finding jurisdiction based on an ongoing business relationship, the defendant had engaged in more significant conduct than simply placing multiple orders. In *Henry R. Jahn & Son, Inc. v. Superior Court* (1958) 49 Cal.2d 855, 861–862, our high court held that jurisdiction was proper where a foreign corporation made regular purchases from the California plaintiff as its exclusive agent; it took title to the goods in California; it directed its agent on how and where to ship the goods; after it ceased doing

business with the plaintiff, it entered into a similar course of business with another defendant, a resident partnership; and the cause of action grew directly out of the defendant's relationship with the plaintiff and the partnership in California. In *Hall v. LaRonde* (1997) 56 Cal.App.4th 1342, 1344, 1347, the out-of-state defendant entered into a business arrangement with the California plaintiff whereby plaintiff's software application would be incorporated into defendant's software package, and defendant would pay the plaintiff $1.00 for every license it sold for the combined software package. The two parties continued to work together to modify the software platforms, which were revised and updated, and the defendant "purposefully derived a benefit from [his] interstate activities." (*Id.* at p. 1347.) In *American Continental Import Agency v. Superior Court* (1963) 216 Cal.App.2d 317, 322, in addition to purchasing goods in a systematic manner and for a substantial amount through orders mailed from Germany, the defendant foreign corporation sent a director to California on three occasions to enforce the defendant's rights in connection with the sales agreement at issue. In *Rocklin de Mexico, S.A. v. Superior Court* (1984) 157 Cal.App.3d 91, 93, the defendant Mexican corporation had previously been owned by a California corporation that was related by common ownership to the plaintiff, another California corporation. Before the sale, the new owner visited the plaintiff's place of business to determine the availability of lumber for use in the box-making business. The defendant ordered lumber almost weekly from the plaintiff for several months before failing to pay for lumber delivered to it. (*Id*. at pp. 93–94.) The appellate court found these facts sufficient for jurisdiction: in addition to the multiple purchases, the defendant initiated the purchases of lumber; the purchases grew out of the owner's purchase of the California corporation's interest in defendant and his desire for a reliable source of wood; the defendant intended to cause effects in California and derive an economic benefit as a result; and delivery of the lumber and passing of title occurred in California. (*Id*. at p. 98.)

Here, on the other hand, the record does not show defendant engaged in any activity directed toward California beyond placing orders and paying for them. In similar situations, courts have found the contacts insufficient to support special jurisdiction. For

example, in *Tiffany Records, supra,* 276 Cal.App.2d at pp. 615–619, multiple out-of-state defendants had placed dozens or hundreds of orders for phonograph records either by telephone or mail; the defendant in *Belmont Industries, supra,* 31 Cal.App.3d at pp. 284, fn. 2, & 288, had placed repeated orders for drafting services from the plaintiff, although only one such order was at issue in the action.

Plaintiff does not dispute the evidence that discussions between the parties took place by telephone and email, that plaintiff sent representatives to Mexico to meet with defendant's employees, and that no employee or representative of defendant traveled to plaintiff's office in California. These facts distinguish this case from *Safe-Lab, Inc. v. Weinberger* (1987) 193 Cal.App.3d 1050, 1053–1054, cited by plaintiff. The court there found specific jurisdiction over a nonresident consultant who contracted with a California corporation, came to California to negotiate the contract, made monthly trips to California to consult with the company, and directed five percent of his marketing activities toward California. This case is also distinguishable from *Snowey v. Harrah's Entertainment, Inc.* (2005) 35 Cal.4th 1054, upon which plaintiff relies. There, the defendants maintained an interactive Web site that quoted room rates and allowed visitors to make reservations at their hotels. (*Id*. at pp. 1063–1064.) By "touting the proximity of their hotels to California and providing driving directions from California to their hotels, defendants' Web site specifically targeted residents of California." (*Id*. at p. 1064.) In doing so, our high court ruled, the defendants had "purposefully derived a benefit from their Internet activities in California." (*Id*. at pp. 1064–1065.) Moreover, they had purposefully solicited business from California residents by advertising extensively in the state and regularly sending mailings advertising their hotels to selected California residents. (*Id*. at p. 1065; compare *Jewish Defense Organization, Inc. v. Superior Court* (1999) 72 Cal.App.4th 1045, 1060 [registering name as domain name and posting passive web sites on the Internet not a purposeful act directed toward forum state].)

We are not aware of any case holding a defendant subject to California's jurisdiction in a case such as this—in which the defendant purchased or licensed a product from a California plaintiff for its own use, the defendant did not visit California,

and all communications took place either in person when plaintiff's representative traveled to the foreign state or by telephone or email. Even in light of the multiple payments defendant made between 2010 and 2013, we agree with the trial court that there is an insufficient showing to support specific jurisdiction in this case.

In its brief and at oral argument, plaintiff placed particular reliance on *Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462 (*Burger King*) to support its jurisdiction argument. There, two Michigan residents contacted Burger King's district office in Michigan and applied for a license to operate a Burger King franchise. (*Id.* at p. 466.) The application was forwarded to Burger King's headquarters in Miami, Florida, which entered into a preliminary agreement with the applicants. After extended negotiations, the Michigan residents signed a 20-year franchise agreement pursuant to which one of the franchisees, Rudzewicz, was personally obligated to make payments of more than $1 million over the course of that period to Burger King in Miami. (*Id.* at p. 467.) The contracts provided that the franchise relationship was established in Miami and governed by Florida law, and that the payment of all fees and the provision of all required notices must be sent to Miami headquarters. (*Id.* at pp. 465–466.) After about a year, the Michigan franchise began to suffer financial difficulties. Several Burger King officials in Miami conducted extended negotiations with the Michigan franchisees by mail and telephone, but ultimately, the Burger King headquarters sent a notice of default and demanded that the franchisees vacate the premises. (*Id*. at p. 468.) The franchisees refused to cease operations, and Burger King sued them in a Florida federal district court. (*Ibid.*) Rudzewicz filed a motion to quash on the ground of lack of personal jurisdiction, which was denied. (*Id.* at pp. 468–469.)

The Supreme Court concluded that the exercise of jurisdiction over the Michigan franchisee in a Florida court did not violate due process. (*Burger King*, *supra*, 471 U.S. at p. 487.) The Court made clear that an individual's contract with an out-of-state party *alone* does not establish sufficient minimum contacts. Rather, the Court applied a "realistic" approach that considers prior negotiations and future consequences along with the terms of the contract and the parties' course of dealing to determine whether the

defendant "purposefully established minimum contacts within the forum." (*Id.* at p. 479.) Applying these factors, the Court cited to several relevant facts: Rudzewicz had deliberately reached out to negotiate with a Florida corporation to create a long-term franchise with "manifold benefits that would derive from affiliation with a nationwide organization." (*Id.* at pp. 479–480.) The negotiations resulted in a set of contracts creating "a carefully structured 20-year relationship that envisioned continuing and wide-reaching contacts with Burger King in Florida," and which included the "voluntary acceptance of the long-term and exacting regulation of his business from Burger King's Miami headquarters." (*Id.* at p. 480.) Rudzewicz's refusal to make the payments required under the contracts and his continued use of the Burger King trademarks and propriety information after his termination caused "foreseeable injuries to the corporation in Florida." The Court concluded that for all of these reasons, it was "presumptively reasonable" for Rudzewicz to be called to account in Florida for those injuries. (*Ibid.*)

Rudzewicz argued that he had "[no] reason to anticipate a Burger King suit outside of Michigan" because Burger King had a district office there which supervised the franchise. (*Burger King*, *supra*, 471 U.S. at p. 480.) The Court disagreed and concluded that he should reasonably have anticipated being sued in Florida for a host of reasons: he knew he was affiliating with an enterprise based in Florida; the contract documents emphasized that Burger King's operations are conducted and supervised from Miami; all relevant notices and payment were to be sent to Miami; the agreements were made in and enforced from Miami; throughout the disputes the franchisees carried on a "continuous course of direct communications by mail and by telephone" with Miami headquarters; and the lease for the premises provided for binding arbitration in Miami of certain disputes. Further, the contract itself provided that it "shall be deemed made and entered into in the State of Florida and shall be governed and construed under and in accordance with the laws of the State of Florida." (*Id.* at pp. 480–481.) The Court recognized that a choice-of-law provision alone would be insufficient to confer jurisdiction, but concluded that the provision, "when combined with the 20-year interdependent relationship Rudzewicz established with Burger King's Miami

headquarters, [] reinforced . . .the reasonable foreseeability of possible litigation there." (*Id.* at p. 482.) Rudzewicz, the Court concluded, " 'purposefully availed himself of the benefits and protections of Florida's laws' by entering into contracts expressly providing that those laws would govern franchise disputes. [Citation.]" (*Ibid.*)

The facts of *Burger King* are readily distinguishable from the case at bar. Here, there was no contract setting up a 20-year interdependent relationship by which the party in the forum state exerted significant control over the party in a different state, nor was there was any provision stating that any contract was deemed to be formed in California and that California law would govern. The anticipated consequences of plaintiff's proposal were, apparently, merely a series of orders and payments that might—or might not—continue one or more years into the future. While harm to plaintiff due to non-payment by defendant was a "foreseeable injury" in California, the possible malfunction of plaintiff's product was also a "foreseeable injury" in Mexico. As we have described, the bare act of purchasing goods or services in California to be provided in Mexico cannot be described as purposefully availing oneself of the benefits and protections of California's laws.[2]

III. DISPOSITION

The order quashing service of summons is affirmed.

[2] While not dispositive, it is also relevant to our analysis that defendant is a corporation located in a foreign *nation* and not just in a foreign state. " 'Great care and reserve should be exercised when extending our notions of personal jurisdiction into the international field.' [Citations.]" (*Asahi Metal Industry Co., Ltd. v. Superior Court of California, Solano County* (1987) 480 U.S. 102, 115.)

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Rivera, J.

We concur:

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Reardon, Acting P.J.

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Streeter, J.